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Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert H. Corbin

May 21, 1982

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Mr. Mark Webb  
Deputy Santa Cruz County Attorney  
Courthouse  
Nogales, AZ 85621

Re: I82-062 (R82-030)

Dear Mr. Webb:

This is in response to your letter dated March 5, 1982, to the Superintendent of the Patagonia Union High School District concerning how surplus tax monies collected for payment of bonds and the interest thereon may be used. The following is a partial revision of your opinion.

As we understand, Patagonia Union High School District has fully paid a bond issue and interest thereon and has money remaining in its bond interest, bond redemption and bond building accounts for that bond issue. We further understand that the school district recently has issued additional bonds and wishes to use the surplus in the interest account to pay interest on the new bond issue, the surplus in the bond redemption account to retire the new bond issue, and the surplus in the bond building account to build, renovate or improve school buildings.

As you pointed out, A.R.S. § 15-1028.A expressly provides in part:

If a bond issue and interest thereon have been fully paid and a balance remains in the building fund from taxes collected for payment of the bonds and interest, the balance may be applied on the payment of other outstanding bonded indebtedness of the school district payable from the levy of taxes on property within the school district in which the excess tax monies were collected, or if there is no

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outstanding bonded indebtedness, the balance remaining in or accruing to the bond and interest account shall, upon written request of the governing board of the school district, be transferred to the general fund of the school district.

We do not agree, however, that the surplus in the bond interest, bond redemption, and bond building accounts may be used to build, renovate or improve school buildings or for any other construction purposes. The surplus in all three accounts is the result of taxes collected for the payment of the bond issue. The statute says this surplus may be applied on the payment of other outstanding bonded indebtedness. The policy underlying A.R.S. § 15-1028.A appears to be that surplus tax monies will be used to reduce present or future property taxation by decreasing bonded indebtedness. To allow any surplus to be used for construction purposes circumvents that policy.

Although the statute uses language suggesting some discretion, we think the Legislature intended that any surplus be used only to reduce present bonded indebtedness or, if there is no present bonded indebtedness, future bonded indebtedness at the election of the school board. The Legislature's primary intent to reduce outstanding indebtedness to zero is evidenced by the Legislature's conditioning the option of transferring any surplus to the general fund of the district only upon there being no outstanding bonded indebtedness. See A.R.S. § 15-1028.A.

Finally, with regard to your statement about A.R.S. § 15-1024 and the reference to that provision in the superintendent's letter to you dated March 2, 1982, interest earned from the investment of school bond proceeds must be credited to the sinking fund to reduce bonded indebtedness. Atty. Gen. Op. No. 180-99.

Sincerely,



BOB CORBIN  
Attorney General

BC:CWL:lm

RICHARD N. GROVES  
County Attorney



Chenoweth and Loma  
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EDUCATION OPINION  
ISSUE NO LATER THAN  
5-7-82

March 5, 1982

3-10-82 *pc*  
LOWE  
R82- 030

Mr. Joseph Landavazo  
Superintendent  
Patagonia Union High School  
Box 264  
Patagonia, Arizona 85624

Dear Mr. Landavazo:

I have reviewed your correspondence of March 2, and concur in your conclusion. I would draw your attention, however, to A.R.S. § 15-1028(A), which relates to disposition of surplus tax monies. This section provides in pertinent part that surplus tax revenues collect for payment of bonds:

"...may be applied on the payment of other outstanding bonded indebtedness of school district payable from the levy of taxes on property within the school district in which the excess tax monies were collected..." (emphasis added)

A.R.S. § 15-1024 does not apply to the facts in this case, as the Legislature has specifically adopted a statute dealing with surplus tax revenues and must, therefore, be considered an exception to this general statute. See, A.R.S. § 1-211.

Thus, the surplus monies which are the subject of the inquiry may be used towards bond interest and bond redemption. Note also that that statute is discretionary. Therefore, it cannot be considered improper to also use the funds for construction purposes. If you have further questions, please contact our office.

Sincerely,

*Mark Webb*  
MARK WEBB, Deputy  
Santa Cruz County Attorney

MW/yu

APP:  
cc: Honorable Robert Corbin